

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FUBOTV INC. and FUBOTV MEDIA INC.,

Plaintiffs,

-against-

THE WALT DISNEY COMPANY, ESPN,
INC., ESPN ENTERPRISES, INC., HULU,
LLC, FOX CORPORATION, and WARNER
BROS. DISCOVERY, INC.,

Defendants.

Civil Action No. 24-cv-1363-MMG-JW

**DECLARATION OF THOMAS G.
SCHULTZ IN SUPPORT OF
PLAINTIFFS' REPLY IN SUPPORT OF
THEIR MOTION FOR PRELIMINARY
INJUNCTION**

I, Thomas G. Schultz, hereby declare as follows:

1. I am an attorney at the law firm Kellogg, Hansen, Todd, Figel, & Frederick PLLC, and serve as counsel for fuboTV Inc and fuboTV Media Inc. (collectively, "Fubo") in this matter. I am submitting this declaration in support of Fubo's Reply in Support of its Motion for Preliminary Injunction. I have personal knowledge of the matters set forth in this declaration.

2. Attached as **Exhibit 1** is a true and correct copy of a March 28, 2016 article by Ed Desser titled "Handicapping the Netflix of sports: Win, place, show, scratch" published on LinkedIn.

3. Attached as **Exhibit 2** is a true and correct copy of a June 12, 2017 article by Ed Desser titled "Sports media marketplace quickly evolving but still robust" published on LinkedIn.

4. Attached as **Exhibit 3** is a true and correct copy of a November 6, 2017 article by Ed Desser titled "Twelve Ways Sports Networks will adapt to evolving marketplace" published on LinkedIn.

5. Attached as **Exhibit 4** is a true and correct copy of a January 8, 2021 article by Ed Desser and John Kosner titled “The Fourth Quarter of Sports Media: Falling Bundles, Rising Streams” published in Sportico.

6. Attached as **Exhibit 5** is a true and correct copy of a September 1, 2023 Charter Communications presentation titled “The Future of Multichannel Video: Moving Forward, Or Moving On.”

7. Attached as **Exhibit 6** is a true and correct copy of the April 16, 2024 Initial Pretrial Conference Transcript.

8. Attached as **Exhibit 7** is a true and correct copy of a May 21, 2021 article titled “Comcast Heralds NBA’s Return to NBC as TNT Drama Unfolds” published in Sportico.

9. Attached as **Exhibit 8** is a true and correct copy of the June 17, 2024 Deposition Transcript of James Pitaro.

10. Attached as **Exhibit 9** is a true and correct copy of the June 19, 2024 Deposition Transcript of Sean Breen.

11. Attached as **Exhibit 10** is a true and correct copy of the June 20, 2024 Deposition Transcript of Bob Iger.

12. Attached as **Exhibit 11** is a true and correct copy of the June 21, 2024 Deposition Transcript of Justin Lancer.

13. Attached as **Exhibit 12** is a true and correct copy of the June 21, 2024 Deposition Transcript of Justin Warbrooke.

14. Attached as **Exhibit 13** is a true and correct copy of the June 24, 2024 Deposition Transcript of Bruce Campbell.

15. Attached as **Exhibit 14** is a true and correct copy of the June 27, 2024 Deposition Transcript of Justin Connolly.

16. Attached as **Exhibit 15** is a true and correct copy of the June 27, 2024 Deposition Transcript of John Nallen.

17. Attached as **Exhibit 16** is a true and correct copy of the June 28, 2024 Deposition Transcript of Alberto Horihuela.

18. Attached as **Exhibit 17** is a true and correct copy of the July 10, 2023 Expert Declaration of Ed Desser.

19. Attached as **Exhibit 18** is a true and correct copy of the July 10, 2023 Rebuttal Expert Declaration of Michael Whinston, Ph.D.

20. Attached as **Exhibit 19** is a true and correct copy of the July 11, 2024 Deposition Transcript of Peter Distad.

21. Attached as **Exhibit 20** is a true and correct copy of the July 13, 2024 Deposition Transcript of Gary Schanman.

22. Attached as **Exhibit 21** is a true and correct copy of the July 17, 2024 Deposition Transcript of Jonathan Orszag.

23. Attached as **Exhibit 22** is a true and correct copy of the July 22, 2024 Deposition Transcript of Michael Whinston.

24. Attached as **Exhibit 23** is a true and correct copy of the July 24, 2024 Deposition Transcript of Edwin Desser.

25. Attached as **Exhibit 24** is a true and correct copy of the July 26, 2024 Deposition Transcript of Anthony Petitti.

26. Attached as **Exhibit 25** is a true and correct copy of a July 30, 2024 letter from Nancy Pelosi to the Department of Justice regarding the live sports streaming TV venture.

27. Attached as **Exhibit 26** is PX154, a true and correct copy of a [REDACTED]

[REDACTED].

28. Attached as **Exhibit 27** is a true and correct copy of the August 1, 2024 Second Declaration of Robert Thun.

29. Attached as **Exhibit 28** is a true and correct copy of an August 1, 2024 article titled “Venu Sports Streaming Service to Cost \$42.99 a Month” published in The Wall Street Journal.

30. Attached as **Exhibit 29** is a true and correct copy of a webpage titled “The Fastest Time to Profit” as captured from Tipalti Approve on August 1, 2024.

31. Attached as **Exhibit 30** is a true and correct copy of [REDACTED]

[REDACTED]
[REDACTED]

32. Attached as **Exhibit 31** is a true and correct copy of a [REDACTED]

[REDACTED]
[REDACTED]

33. Attached as **Exhibit 32** is a true and correct copy of [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

34. Attached as **Exhibit 33** is a true and correct copy of a [REDACTED]

[REDACTED]

[REDACTED]

35. Attached as **Exhibit 34** is a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

36. Attached as **Exhibit 35** is a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

37. Attached as **Exhibit 36** is a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

38. Attached as **Exhibit 37** is a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

39. Attached as **Exhibit 38** is a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. Attached as **Exhibit 39** is JX001, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

41. Attached as **Exhibit 40** is JX003, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

42. Attached as **Exhibit 41** is JX013, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

43. Attached as **Exhibit 42** is JX014, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

44. Attached as **Exhibit 43** is JX015, a true and correct copy of [REDACTED]

[REDACTED]

45. Attached as **Exhibit 44** is JX016, a true and correct copy of the April 8, 2024 Declaration of Alberto Horiuela in Support of Fubo's Motion for Preliminary Injunction bearing Bates numbers FUBO_0001764 through -771.

46. Attached as **Exhibit 45** is JX036, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47. Attached as **Exhibit 46** is JX041, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

48. Attached as **Exhibit 47** is JX042, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. Attached as **Exhibit 48** is JX059, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

50. Attached as **Exhibit 49** is a true and correct copy of a Summary Exhibit titled “Major Rights Agreement Expirations.”

51. Attached as **Exhibit 50** is PX015, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

52. Attached as **Exhibit 51** is PX019, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

53. Attached as **Exhibit 52** is PX024, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

54. Attached as **Exhibit 53** is PX025, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

55. Attached as **Exhibit 54** is PX052, a true and correct copy of [REDACTED]

56. Attached as **Exhibit 55** is PX053, a true and correct copy of [REDACTED]

57. Attached as **Exhibit 56** is PX055, a true and correct copy of [REDACTED]

58. Attached as **Exhibit 57** is PX058, a true and correct copy of [REDACTED]

59. Attached as **Exhibit 58** is PX059, a true and correct copy of [REDACTED]

60. Attached as **Exhibit 59** is PX061, a true and correct copy of [REDACTED]

61. Attached as **Exhibit 60** is PX076, a true and correct copy of [REDACTED]

62. Attached as **Exhibit 61** is PX081, a true and correct copy of [REDACTED]

[REDACTED]

63. Attached as **Exhibit 62** is PX084, a true and correct copy of [REDACTED]

[REDACTED]

64. Attached as **Exhibit 63** is PX086, a true and correct copy of [REDACTED]

[REDACTED]

65. Attached as **Exhibit 64** is PX087, a true and correct copy of [REDACTED]

[REDACTED]

66. Attached as **Exhibit 65** is PX088, a true and correct copy of [REDACTED]

[REDACTED]

67. Attached as **Exhibit 66** is PX089, a true and correct copy of [REDACTED]

[REDACTED]

68. Attached as **Exhibit 67** is PX102, a true and correct copy of the April 8, 2024 Declaration of David Gandler in Support of Fubo's Motion for Preliminary Injunction bearing Bates numbers FUBO_0001737 through -746.

69. Attached as **Exhibit 68** is PX103, a true and correct copy of the April 8, 2024 Declaration of John Janedis in Support of Fubo’s Motion for Preliminary Injunction bearing Bates numbers FUBO_0001747 through -759.

70. Attached as **Exhibit 69** is PX105, a true and correct copy of the April 8, 2024 Declaration of Todd Mathers in Support of Fubo’s Motion for Preliminary Injunction bearing Bates numbers FUBO_0001772 through -781.

71. Attached as **Exhibit 70** is PX116, a true and correct copy of the April 5, 2024 Declaration of Gary Schanman in Support of Fubo’s Motion for Preliminary Injunction bearing Bates numbers FUBO_0002406 through -410.

72. Attached as **Exhibit 71** is PX117, a true and correct copy of the April 5, 2024 Declaration of Robert Thun in Support of Fubo’s Motion for Preliminary Injunction bearing Bates numbers FUBO_0002411 through -413.

73. Attached as **Exhibit 72** is PX122, a true and correct copy the April 2024 Aluma Insights report titled “Consumer Receptivity to New Sports Streaming Services,” produced by Fubo bearing Bates numbers FUBO_0002558 through -586.

74. Attached as **Exhibit 73** is PX134, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

75. Attached as **Exhibit 74** is PX175, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

76. Attached as **Exhibit 75** is PX176, a true and correct copy of [REDACTED]

77. Attached as **Exhibit 76** is PX178, a true and correct copy of [REDACTED]

78. Attached as **Exhibit 77** is PX182, a true and correct copy of [REDACTED]

79. Attached as **Exhibit 78** is PX183, a true and correct copy of [REDACTED]

80. Attached as **Exhibit 79** is PX188, a true and correct copy of [REDACTED]

81. Attached as **Exhibit 80** is PX190, a true and correct copy of [REDACTED]

82. Attached as **Exhibit 81** is PX192, a true and correct copy of [REDACTED]

83. Attached as **Exhibit 82** is PX204, a true and correct copy of the May 2024 Horowitz presentation titled “State of Media, Entertainment, and Tech Volume II: Viewing Behaviors,” produced by Fubo bearing Bates numbers FUBO_0169164 through -184.

84. Attached as **Exhibit 83** is PX207, a true and correct copy of a document last updated [REDACTED]

[REDACTED]

[REDACTED]

85. Attached as **Exhibit 84** is PX211, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

86. Attached as **Exhibit 85** is PX216, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

87. Attached as **Exhibit 86** is PX220, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

88. Attached as **Exhibit 87** is PX236, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

89. Attached as **Exhibit 88** is PX238, a true and correct copy of [REDACTED]

90. Attached as **Exhibit 89** is PX242, a true and correct copy of [REDACTED]

91. Attached as **Exhibit 90** is PX243, a true and correct copy of [REDACTED]

92. Attached as **Exhibit 91** is PX245, a true and correct copy of [REDACTED]

93. Attached as **Exhibit 92** is PX246, a true and correct copy of [REDACTED]

94. Attached as **Exhibit 93** is PX251, a true and correct copy of [REDACTED]

95. Attached as **Exhibit 94** is PX253, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

96. Attached as **Exhibit 95** is PX255, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

97. Attached as **Exhibit 96** is PX257, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

98. Attached as **Exhibit 97** is PX268, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

99. Attached as **Exhibit 98** is PX269, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

100. Attached as **Exhibit 99** is PX273, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

101. Attached as **Exhibit 100** is PX274, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

102. Attached as **Exhibit 101** is PX275, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

103. Attached as **Exhibit 102** is PX282, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

104. Attached as **Exhibit 103** is PX285, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

105. Attached as **Exhibit 104** is PX286, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

106. Attached as **Exhibit 105** is PX289, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

107. Attached as **Exhibit 106** is PX290, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

108. Attached as **Exhibit 107** is PX319, a true and correct copy of [REDACTED]

109. Attached as **Exhibit 108** is PX322, a true and correct copy of [REDACTED]

110. Attached as **Exhibit 109** is PX325, a true and correct copy of [REDACTED]

111. Attached as **Exhibit 110** is PX336, a true and correct copy of the February 7, 2024 Disney Q1 FY24 Earnings Conference Call.

112. Attached as **Exhibit 111** is PX401, a true and correct copy of a slide titled “Other services that Fubo subscribers pay for.”

113. Attached as **Exhibit 112** is PX404, a true and correct July 10, 2024 video titled “Warner Bros. Discovery CEO David Zaslav Talks Sports Streaming Bundle ‘Venu’” published on CNBC.

114. Attached as **Exhibit 113** is PX412, a true and correct copy of [REDACTED]

115. Attached as **Exhibit 114** is PX413, a true and correct copy of [REDACTED]

116. Attached as **Exhibit 115** is PX433, a true and correct copy of the March 13, 2018 Arbitration Agreement filed in connection with *United States v. AT&T Inc.*, and Time Warner Inc., Case No. 1:17-cv-02511-RJL (D.D.C.).

117. Attached as **Exhibit 116** is PX434, a true and correct copy of the June 6, 2024 Comments of the ACA Connects filed in connection with *In the Matter of Fostering Independent and Diverse Sources of Video Programming*, MB Docket No. 24-115 (FCC).

118. Attached as **Exhibit 117** is PX436, a true and correct copy of the June 6, 2024 Comments of the American Television Alliance filed in connection with *In the Matter of Fostering Independent and Diverse Sources of Video Programming*, MB Docket No. 24-115 (FCC).

119. Attached as **Exhibit 118** is PX438, a true and correct copy of the July 26, 2024 Complaint filed in connection with *Turner Broadcasting Sys., Inc. v. National Basketball Assoc.*, Index No. 653721/2024 (N.Y. Sup. Ct.).

120. Attached as **Exhibit 119** is PX440, a true and correct copy of the June 27, 2018 Complaint filed in connection with *United States v. The Walt Disney Company et al.*, Case No. 18-cv-5800 (S.D.N.Y.).

121. Attached as **Exhibit 120** is PX442, a true and correct copy of an April 22, 2021 article by David Halberstam titled “In a changing world, TV experts Ed Desser and John Kosner share how fans will watch sports in the future” published in Sports Business Journal.

122. Attached as **Exhibit 121** is PX447, a true and correct copy of the April 16, 2024 letter from U.S. Representatives Jerrold Nadler and Joaquin Castro to Bob Iger, Lachlan Murdoch, and David Zaslav regarding the proposed sports streaming joint venture.

123. Attached as **Exhibit 122** is PX448, a true and correct copy of the June 7, 2024 letter from U.S. Representatives Jerrold Nadler and Joaquin Castro to Bob Iger, Lachlan Murdoch, and David Zaslav regarding the response to their April 16 letter.

124. Attached as **Exhibit 123** is PX151, a true and correct copy of a slide containing tables titled [REDACTED]

[REDACTED]

125. Attached as **Exhibit 124** is PX453, a true and correct copy of the June 24, 2024 Updated Expert Declaration of James Trautman.

126. Attached as **Exhibit 125** is PX454, a true and correct copy of the June 24, 2024 Updated Expert Declaration of Jonathan Orszag.

127. Attached as **Exhibit 126** is PX456, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

128. Attached as **Exhibit 127** is a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

129. Attached as **Exhibit 128** is a true and correct copy of an [REDACTED]

[REDACTED]

[REDACTED]

130. Attached as **Exhibit 129** is PX129, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

131. Attached as **Exhibit 130** is a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

132. Attached as **Exhibit 131** is PX431, a true and correct copy of a February 15, 2024 article titled “US to scrutinize Disney, Fox, Warner sports streaming deal, Bloomberg Law reports” published in Reuters.

133. Attached as **Exhibit 132** is a true and correct copy of a May 21, 2021 article titled “Warner Media, Discovery Merger Could Push Netflix into Sports” published in Sportico.

134. Attached as **Exhibit 133** is JX023, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

135. Attached as **Exhibit 134** is JX028, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

136. Attached as **Exhibit 135** is JX032, a true and correct copy of [REDACTED]

[REDACTED]

137. Attached as **Exhibit 136** is JX022, a true and correct copy of [REDACTED]

[REDACTED]

138. Attached as **Exhibit 137** is a true and correct copy of a [REDACTED]

[REDACTED]

[REDACTED]

139. Attached as **Exhibit 138** is a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

140. Attached as **Exhibit 139** is a true and correct copy of a June 21, 2022 article titled “Reverse Stock Split: Explanation, Pros & Cons,” published in Seeking Alpha.

141. Attached as **Exhibit 140** is PX270, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

142. Attached as **Exhibit 141** is PX310, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

143. Attached as **Exhibit 142** is PX003, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

144. Attached as **Exhibit 143** is PX191, a true and correct copy of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct.

Executed: August 1, 2024

Thomas G. Schultz

Thomas G. Schultz